

286.4-450 Bonding requirements for applications submitted on or after January 1, 2020 -- Demonstration of financial condition -- Managing principal -- Background check -- Incomplete application -- Approval or rejection of application -- Time limit -- Appeal -- Hearing -- Eligibility if license denied.

- (1) For any new application for a license, submitted on or after January 1, 2020, to qualify for a license, an applicant shall satisfy and maintain, for the duration of licensure under this subtitle, the following bonding requirements, which shall cover all licensed locations:
 - (a) The applicant shall deposit with the commissioner, in a form directed by the commissioner, one (1) of the following instruments that satisfy the requirements of paragraph (b) of this subsection:
 1. An irrevocable letter of credit;
 2. A corporate surety bond;
 3. Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this state and has deposited United States currency in an amount that satisfies the requirements of paragraph (b) of this subsection, with a signed and notarized acknowledgement from the financial institution; or
 4. A savings certificate of a federally insured financial institution in this state that is not available for withdrawal except by direct order of the commissioner, with a signed and notarized acknowledgement from the financial institution. Interest earned on the certificate shall accrue to the applicant;
 - (b) The instruments identified in paragraph (a) of this subsection shall:
 1. Be made payable to the commissioner;
 2. Be in the following amounts:
 - a. One hundred thousand dollars (\$100,000), if the applicant is privately held; or
 - b. Two hundred fifty thousand dollars (\$250,000), if the applicant is publicly traded;
 3. Provide for claim on the instrument by the commissioner who has a cause of action under this subtitle. The total liability of the surety, cumulative or otherwise, shall not exceed the amount specified in the instrument; and
 4. Be available for the recovery of expenses, fines, and fees levied or imposed by the commissioner under this subtitle, and for losses or damages that are determined by the commissioner to have been incurred by any customer as a result of the applicant's or licensee's failure to comply with the requirements of this subtitle; and
 - (c) No claim shall be maintained to enforce any liability on an instrument under this subsection unless the claim is brought within three (3) years after the act upon which it is based.

- (2) (a) For any application submitted on or after January 1, 2020, including renewal applications, an applicant or licensee shall demonstrate that its financial condition is sufficient to effectively conduct the business of a licensee in one (1) or more licensed Kentucky locations by having and maintaining, for the duration of licensure under this subtitle:
 1. If the applicant is privately held:
 - a. A total net worth of at least fifty thousand dollars (\$50,000), when receivables are one million dollars (\$1,000,000) or less; or
 - b. A total net worth of at least one hundred thousand dollars (\$100,000), when receivables are more than one million dollars (\$1,000,000); or
 2. If the applicant is publicly traded, a total net worth in excess of two hundred fifty thousand dollars (\$250,000).
 - (b) For the purposes of this subsection, receivables shall be determined upon the initial application, or for renewal applications, based on the most recent annual report filed under KRS 286.4-590.
- (3) (a) Each applicant shall have, at the time of making application and for the duration of licensure under this subtitle, at least one (1) managing principal.
 - (b) Prior to a change in managing principal, each licensee shall file a written request for the change with the department. The written request shall include sufficient proof that the new managing principal has experience to satisfy the requirements of this subsection, and the commissioner may deny the requested change.
 - (c) Each person named as a managing principal in an application or written request under this subsection shall provide the commissioner with sufficient proof that the managing principal has at least two (2) years of lending experience working in a financial institution. The commissioner shall determine from the application or written request whether an applicant has sufficient experience to satisfy this requirement and may withhold approval based on this determination.
- (4) (a) At the time of application, the commissioner shall require each managing principal and person in control of an applicant or licensee to submit to a criminal background check.
 - (b) The cost of each records background check shall be borne by the applicant or licensee.
- (5) The commissioner may deem an application incomplete if the applicant fails to pay any fee, or submit any documentation or information, required under this subtitle within sixty (60) days from the date the application was filed. After sixty (60) days, if the application is incomplete, it shall be considered abandoned.
- (6) (a) Once a completed application is filed, and after an investigation, the commissioner shall issue to the applicant a license to make loans in accordance with this subtitle, if the commissioner finds that the financial responsibility, financial condition, experience, character, and general fitness

of the applicant reasonably demonstrate that the applicant, its managing principal, and each person in control of the applicant will operate honestly, fairly, and efficiently in accordance with the purposes of this subtitle.

- (b) If the commissioner finds that the applicant does not meet the requirements under paragraph (a) of this subsection, he or she shall not issue a license and shall return any license fee paid by the applicant, but shall retain the five hundred dollars (\$500) investigation fee to cover the cost of investigating the application.
 - (c) When determining whether an applicant has satisfied the qualifications required under this subsection, the commissioner shall consider the grounds set forth in KRS 286.4-490.
 - (d) The commissioner shall approve or deny every application for license within sixty (60) days from the receipt of a completed application, unless the time is extended by a written agreement between the applicant and the commissioner.
 - (e) If the commissioner denies a license, the applicant may, within twenty (20) days from the date of denial, file a written petition requesting a hearing to appeal with the office of the commissioner. Upon the timely filing of a petition to appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the applicant does not file a petition within the required time frame, he or she shall be deemed to have waived the right to appeal.
 - (f) The official record of the hearing shall be filed in the office of the commissioner as a public record, open to public inspection.
- (7) Any applicant, or person in control of an applicant, that has a license denied by the commissioner shall not be eligible to apply for a license under this subtitle, or serve as a person in control of an applicant or licensee, until the expiration of one (1) year from the date a final order denying the license is entered by the commissioner.

Effective: June 27, 2019

Formerly codified as KRS 288.450.

History: Amended 2019 Ky. Acts ch. 120, sec. 4, effective June 27, 2019. -- Amended 2010 Ky. Acts ch. 24, sec. 660, effective July 15, 2010. -- Amended 2000 Ky. Acts ch. 157, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 198, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 217, effective July 15, 1996. -- Created 1960 Ky. Acts ch. 204, sec. 5, effective June 16, 1960.

Legislative Research Commission Note (7/12/2006). In accordance with 2006 Ky. Acts ch. 247, secs. 38 and 39, this statute has been renumbered as a section of the Kentucky Financial Services Code, KRS Chapter 286, and KRS references within this statute have been adjusted to conform with the 2006 renumbering of that code.